

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

Case No. 18-30448

-v-

Juan Garcia-Jimenez,

Defendant.

PRELIMINARY EXAMINATION

BEFORE THE HONORABLE MONA K. MAJZOUB
United States District Magistrate Judge
Theodore Levin United States District Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
September 24, 2018

APPEARANCES:

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1 Detroit, Michigan

2 October 15, 2018

3 1:19 a.m.

4 * * *

5 THE CLERK: Court calls Case Number 18-30448, United
6 States of America versus Juan Garcia-Jimenez.

7 MR. McDONALD: Again, Tim McDonald on behalf of the
8 United States. Good afternoon again, your Honor.

9 THE COURT: Good afternoon. And thank you.

10 MS. BRAZILE: Good afternoon, your Honor. Rhonda
11 Brazile of the Federal Defender Office on behalf of Mr. Juan
12 Garcia-Jimenez.

13 THE COURT: Thank you, Ms. Brazile.

14 Will the defendant state his name to the Court,
15 please?

16 THE DEFENDANT: Juan Antonio Garcia-Jimenez.

17 THE COURT: Mr. Garcia-Jimenez, today is the date and
18 time set for a preliminary examination. Do you require or
19 need the assistance of an interpreter?

20 THE DEFENDANT: No, your Honor.

21 THE COURT: All right. Very well. Are the -- is
22 counsel prepared to proceed?

23 MR. McDONALD: Yes, your Honor.

24 MS. BRAZILE: Yes, your Honor.

25 THE COURT: Very well. Mr. McDonald?

1 MR. McDONALD: Your Honor, may I approach? I have
2 handed counsel five photographs that I intend to admit during
3 the preliminary exam.

4 Your Honor, I have one witness. When the Court is
5 prepared, I am prepared to call that witness.

6 THE COURT: Very well.

7 MR. McDONALD: United States calls Michael Goloweyco
8 of the United States Border Patrol.

9 THE COURT: Good afternoon.

10 THE WITNESS: Good afternoon, your Honor.

11 THE COURT: Please raise your right hand.

12 * * *

13 MICHAEL GOLOWEYCO

14 was called as a witness, after having
15 been duly sworn to testify to the truth.

16 * * *

17 THE COURT: Please state your name and spell it for
18 the record.

19 THE WITNESS: Michael Goloweyco. M-I-C-H-A-E-L.
20 M-I-C-H-A-E-L, G-O-L-O-W-E-Y-C-O.

21 THE COURT: If you will have -- be seated at the
22 witness table, and speak into the microphone clearly and
23 slowly when you are asked questions.

24 Mr. McDonald, would you like to proceed?

25 MR. McDONALD: Thank you, your Honor.

1 DIRECT EXAMINATION

2 BY MR. McDONALD:

3 Q. Sir, where are you employed?

4 A. I'm employed for the United States Border Patrol.

5 Q. All right. And for how long have you been employed with
6 the United States Border Patrol?

7 A. A little over nine years.

8 Q. All right. And can you tell us briefly what your duties
9 are with the United States Border Patrol?10 A. I work in our Intelligence Department. I investigate
11 smuggling, cross-border activity, and other crimes within the
12 city.13 Q. Okay. And when you say "the city" you mean the City of
14 Detroit, Michigan?

15 A. Yes, sir.

16 Q. All right. I want to ask you about an investigation
17 involving a subject by the name of Juan Antonio Garcia-Jimenez.
18 Are you familiar with that investigation?

19 A. I am, sir.

20 Q. And can you tell -- can you tell us what the nature of the
21 investigation is?

22 A. We had several cross-border events.

23 Q. Who is "we"?

24 A. The United States Border Patrol has had several smuggling
25 events through the CBP cargo tunnel or train tunnel within the

1 City of Detroit.

2 Q. Okay. And what -- you said you have had several smuggling
3 events. When did those smuggling events begin?

4 A. They began in March of 2018.

5 Q. Okay. And now, this is a -- this investigation, is this
6 the United States Border Patrol and any other law enforcement
7 agencies?

8 A. Yes. We're also co-investigating with the Royal Canadian
9 Mounted Police.

10 Q. Okay. And you said since March you had a number of
11 incidents. How many aliens were smuggled from March of 2018
12 until present day?

13 A. We have a total of nine aliens.

14 Q. Okay. And you said through a cargo tunnel. Are you
15 familiar with something called the Michigan-Canadian Railroad
16 Tunnel?

17 A. Yes, sir.

18 Q. All right. And can you just describe that for us?

19 A. It is a -- about a mile and a half long. It runs between
20 Windsor, Ontario and Detroit, Michigan. It's for trains only,
21 typically for cargo trains.

22 Q. Okay. And that's in the Eastern District of Michigan?

23 A. Yes, sir.

24 Q. Now, drawing your attention to March of 2018, that was the
25 first incident?

1 A. That we know of, yes.

2 Q. All right. And do you know how many aliens were -- were
3 smuggled through that tunnel in March?

4 A. It was one Mexican national.

5 Q. All right. And as result of your investigation into that
6 March smuggling incident, were you able to obtain a phone
7 number of the smuggler?

8 A. Yes, we were.

9 Q. And how were -- how did you obtain that phone number?

10 A. The -- the illegal alien gave us the phone number.

11 Q. Okay. And on the basis of that number, what -- what, if
12 anything, did you do with it?

13 A. We were able to run that number through our CBP databases
14 and essentially our -- the defendant had applied for a Nexus
15 card using that phone number.

16 Q. Okay. Well, we will get to the defendant in a second, but
17 you said this -- you had a phone number and you looked through
18 your databases; correct?

19 A. Correct.

20 Q. Were you able to obtain a photograph of an individual who
21 had used that number in the past?

22 A. We were.

23 Q. All right. And did you look at that photograph?

24 A. We did.

25 Q. Do you see anyone that -- in the courtroom that -- that

1 looks like the person depicted in that photograph?

2 A. I do.

3 Q. All right. And can you point to that person and tell me
4 an article of clothing that person is wearing?

5 A. It's going to be the gentleman sitting down with the blue
6 suit on.

7 MS. BRAZILE: Okay. Your Honor, we don't have this
8 photograph that the agent is referring to or that the
9 government is referring to in making the comparison. I object
10 to that identification without the photograph.

11 MR. McDONALD: Well, Judge, I mean, he made an
12 in-court identification based upon his review of a prior
13 photograph. I don't know that there is any legal basis to
14 object to that.

15 THE COURT: Do you want to establish the defendant's
16 identity through any other means, including any of your
17 exhibits?

18 MR. McDONALD: I will. I will as we go. Maybe I'll
19 reserve the identification, if the Court permits.

20 THE COURT: I think we will do that. Thank you.

21 BY MR. McDONALD:

22 Q. Okay. All right. So, but now let me specifically direct
23 your attention to July 30th of 2018 at 4:00 in the morning.

24 Did the United States Border Patrol have an encounter
25 with some additional aliens?

1 A. We did. We encountered two Guatemalan nationals at the --
2 I guess the entrance of the train tunnel in Detroit.

3 THE COURT: What was the date again?

4 MR. McDONALD: That was July 30th, 2018, your Honor.

5 THE COURT: Thank you.

6 BY MR. McDONALD:

7 Q. All right. And -- and were those individuals arrested?

8 A. They were.

9 Q. What were they arrested for?

10 A. Illegal entry into the United States.

11 Q. All right. And were you able to identify the citizenship
12 and immigration status of these two individuals?

13 A. Yes, we were.

14 MR. McDONALD: All right. May I approach the
15 witness?

16 THE COURT: You may.

17 BY MR. McDONALD:

18 Q. Sir, I'm handing you what's been marked as Exhibit
19 Number 1. Can you identify it for the record?

20 A. Yes.

21 Q. What is it?

22 A. That's going to be the entrance to the train tunnel on the
23 Windsor side.

24 Q. Okay. That's a photograph of the entrance?

25 A. No. That's going to be a still of the video we have of

1 the aliens entering the tunnel.

2 Q. Okay. And where did you get the still?

3 A. Through our Canadian Pacific Railroad Police.

4 MR. McDONALD: Okay. Move for admission of Exhibit
5 Number 1, your Honor.

6 THE COURT: Any -- any objection?

7 MS. BRAZILE: No, your Honor.

8 THE COURT: Exhibit 1 is admitted.

9 (Received in Evidence: Exhibit Number 1.)

10 BY MR. McDONALD:

11 Q. All right. And is that the -- you said that is the
12 Canadian side?

13 A. Correct.

14 Q. All right. Showing you -- do you see any individuals in
15 Exhibit 1?

16 A. Yes. I see two individuals.

17 Q. And were these the two individuals that you arrested on
18 the 30th of July at 4:00 in the morning?

19 A. They were, yes.

20 Q. Showing you what's been marked as Government's Exhibit
21 Number 2, do you recognize what that is?

22 A. Yes. That's the exit of the train tunnel on the Detroit
23 side.

24 Q. And does that still accurately reflect what was depicted
25 in the video that you received?

1 A. Yes, sir.

2 MR. McDONALD: Move for admission of 2.

3 THE COURT: Ms. Brazile?

4 MS. BRAZILE: No objection, your Honor.

5 THE COURT: Exhibit 2 is admitted.

6 (Received in Evidence: Exhibit Number 2.)

7 MR. McDONALD: Thank you.

8 BY MR. McDONALD:

9 Q. Do you see two individuals coming out of the tunnel in
10 that photograph?

11 A. Yes, I do.

12 Q. Is that the same two individuals that went in, in Exhibit
13 Number 1?

14 A. Correct. Yes, sir.

15 Q. And are those two individuals the two individuals you
16 arrested on the 30th of July?

17 A. That is. They are.

18 Q. All right. Also showing you Government's Exhibit 3, do
19 you recognize what that is?

20 A. Yes. It's also the entrance on the Windsor side.

21 Q. Okay. And does that accurately depict the stills of the
22 video?

23 A. Yes, sir.

24 MR. McDONALD: I move for admission of 3.

25 THE COURT: Ms. Brazile?

1 MS. BRAZILE: No objection, your Honor.

2 THE COURT: Exhibit 3 is admitted.

3 (Received in Evidence: Exhibit Number 3.)

4 MR. McDONALD: Thank you.

5 BY MR. McDONALD:

6 Q. Are any of the individuals in the photograph depicted --
7 or excuse me.

8 Any individuals that you arrested, are they depicted
9 in that photograph?

10 A. Yes.

11 Q. Where are they depicted?

12 A. They are up on the -- I guess the walkway of the tunnel.

13 Q. Okay. Now, did you have an opportunity at some point
14 after arresting these two individuals to interview them?

15 A. I did interview them, yes.

16 Q. All right. And can you tell the Court what, if anything,
17 they told you?

18 A. They described the events leading up to the -- the
19 smuggling event and then also the smuggling event itself.

20 They essentially were both legal farm workers in
21 Canada. Their -- both their visas were about to expire or
22 possibly expired already in Canada and they both wanted to
23 come to the United States to continue working.

24 Q. All right. And so how -- did they tell you how it was
25 that they began to try to find someone to assist them?

1 A. In the Leamington, Ontario area they started asking around
2 some of the other farm workers, and if they knew anybody that
3 could get them into the United States.

4 Q. All right. And then what? What did they tell you?

5 A. And then they said that they received Mr. Garcia's phone
6 number from a friend.

7 Q. Okay. Was that -- now, was that the same phone number, by
8 the way, that you received from the first alien in March?

9 A. Yes, sir.

10 Q. Okay. And that phone number came back to Mr. Garcia?

11 A. Yes, sir.

12 Q. Okay. And -- all right. So they indicate that they get
13 the phone number. Do they talk about making contact with --
14 with this subject?

15 A. Yes, sir. They said they used the WhatsApp application on
16 their phones in order to contact him.

17 Q. All right. And did they refer to the person they were
18 talking to by any nickname?

19 A. Yeah. I believe they used Tralo -- Tralero.

20 Q. Tralero?

21 A. Tralero.

22 Q. What about Antonio, did they ever use that name?

23 A. I don't know -- I don't believe that group used Antonio.
24 Possibly Tono.

25 Q. Okay. Tono?

1 A. Tono, yes.

2 Q. All right. And did they tell you if they made any
3 arrangements with Tono to be smuggled into the United States?

4 A. Yes, they did. We had it documented on the WhatsApp
5 conversation.

6 Q. What do you mean?

7 A. So the -- we took screenshots of all of the -- both aliens
8 allowed us to look through their phones and so we took
9 screenshots of both conversations with Mr. Garcia and/or Tono
10 and it was basically the facilitation of their entry into the
11 United States.

12 Q. Okay. Was that in English or in Spanish?

13 A. It was in the Spanish language.

14 Q. Okay. What were the arrangements?

15 A. The arrangements were that the subject would -- would pick
16 up both subjects in Leamington area, drive them over to the
17 Windsor area.

18 THE COURT: Wait, wait, wait. The subject, you mean
19 the defendant?

20 THE WITNESS: The defendant.

21 THE COURT: Would pick up both subjects?

22 THE WITNESS: Would pick up both subjects in
23 Leamington, Ontario, at the farm where they were working at,
24 and drive them to the Windsor area.

25 Both subjects were told they needed to pay \$1,500 a

1 piece.

2 BY MR. McDONALD:

3 Q. To who?

4 A. To Mr. Garcia.

5 Q. Okay.

6 A. In order to be driven over to the Windsor area and then
7 taken to the tunnel itself.

8 Q. All right. And according to the aliens, were they, in
9 fact, picked up in Leamington?

10 A. They were picked up in Leamington, yes.

11 Q. And according to the aliens, were they, in fact,
12 transported to Windsor?

13 A. Yes, they were.

14 Q. And did the aliens tell you who transported them and how
15 to Windsor?

16 A. Yes. They -- they told us that it was -- that it was
17 Don Antonio or Tonio that picked them up.

18 Q. Okay. The person who you told us is the defendant?

19 A. Correct.

20 Q. Okay. And so when they get to Windsor what, if anything,
21 happens, do you know?

22 A. They get to Windsor. I believe it was at about -- they
23 got into Windsor at about 11:00, and he requested that they --

24 Q. Who is "he"? Who is "he"?

25 A. The defendant requested that they change over their money

1 from Canadian to U.S. dollars.

2 Q. All right. And so did they do that?

3 A. They did. So they went to the Windsor casino and
4 exchanged all their money, their Canadian money over for U.S.
5 dollars.

6 MR. McDONALD: Okay. May I approach the witness?

7 THE COURT: You may.

8 BY MR. McDONALD:

9 Q. Sir, I'm showing you what's been marked as Government
10 Exhibit Number 4. Can you identify what that is?

11 A. Yes. This is the defendant at the cashier's stand with --

12 MS. BRAZILE: Excuse me, your Honor. My exhibits are
13 not marked.

14 Which one are you referring to?

15 MR. McDONALD: Oh, I'm sorry.

16 BY MR. McDONALD:

17 Q. All right. You said it shows what?

18 A. That is the defendant at the cashier counter in the
19 Windsor casino with both of the Guatemalan nationals.

20 Q. All right. And how did you obtain images from the
21 Caesar's or the Windsor casino?

22 A. It was through our Canadian liaison, was able to contact
23 the Windsor casino and get it through Ontario Provincial
24 Police.

25 Q. Okay. So the video?

1 A. Yes, sir.

2 Q. And did you watch the video?

3 A. I did.

4 Q. And does that still of the video accurately and fairly
5 depict the video itself?

6 A. Yes, sir.

7 Q. And do you see -- strike that.

8 MR. McDONALD: Your Honor, move for admission of
9 Government Exhibit Number 4.

10 THE COURT: Any objection, Ms. Brazile?

11 MS. BRAZILE: No, your Honor.

12 THE COURT: Exhibit 4 is admitted.

13 (Received in Evidence: Exhibit Number 4.)

14 MR. McDONALD: Thank you.

15 BY MR. McDONALD:

16 Q. And Exhibit 4, you said that there is a -- how many
17 subjects are in that photograph?

18 A. Three subjects.

19 Q. And do you recognize all three of them?

20 A. I do.

21 Q. And can you describe where and who they are?

22 A. Yes, I can.

23 Q. Okay.

24 A. Okay. So the defendant is going to be on the left-hand
25 side. Both of our Guatemalan nationals did not speak any

1 English, so he had to do all the trans -- the defendant had to
2 do all the translating for them at the cashier counter. The
3 other one is, I believe, Carpio Recinos and then Corado
4 Recinos. Both were cousins.

5 Q. Those two individuals that you just identified, Carpio and
6 Corado, were those the two individuals that were arrested on
7 the Detroit side?

8 A. Yes, sir, they were.

9 Q. And the other person who you claim is the defendant, can
10 you identify what he is wearing?

11 A. Yes, sir. He is --

12 Q. What's he wearing?

13 A. He is wearing a -- looks like to be a button-down plaid
14 shirt.

15 Q. Okay. And the person depicted in that photograph that you
16 have identified as the defendant, do you see that person in the
17 courtroom?

18 A. Yes, sir.

19 Q. All right. Can you point to that person and identify what
20 he is wearing today?

21 A. Yes, sir. He is sitting right there in front of me with
22 the blue jumpsuit, orange flip-flops.

23 MR. McDONALD: Your Honor, at this time let the
24 record reflect that the witness has identified the defendant.

25 THE COURT: I'm sure it will reflect that.

1 MR. McDONALD: Thank you.

2 BY MR. McDONALD:

3 Q. All right. So the aliens had told you, you correct me if
4 I'm wrong, that they had to go Caesar's casino -- or a casino,
5 excuse me -- to transfer, exchange their money?

6 A. Correct.

7 Q. After they do that, what did they tell you happened?

8 A. They stated they left the casino together, all three of
9 them, and the video does corroborate that. It shows them
10 walking out towards -- I believe it's Riverside Drive there,
11 and they all headed towards the entrance of the train tunnel
12 in the Windsor area.

13 MR. McDONALD: May I approach the witness again?

14 THE COURT: Yes, you may.

15 BY MR. McDONALD:

16 Q. I'm showing you Government's Exhibit Number 5. Do you
17 recognize what that is?

18 A. Yes, sir.

19 Q. Can you identify it for the record?

20 A. Yes. It's going to be the three individuals walking
21 together in the casino.

22 Q. Okay. And where did you obtain that image?

23 A. That was through the video that we obtained through
24 Canada.

25 Q. Does that fairly and accurately depict what you saw on the

1 video?

2 A. Yes, sir.

3 MR. McDONALD: Move for the admission of 5.

4 THE COURT: Any objection, Ms. Brazile?

5 MS. BRAZILE: No objection, your Honor.

6 THE COURT: Exhibit 5 is admitted.

7 (Received in Evidence: Exhibit Number 5.)

8 BY MR. McDONALD:

9 Q. Okay. So after walking through the casino did the aliens
10 tell you what they did with the defendant?

11 A. Yes. They headed back to his van and then at that time
12 headed over to the entrance of the -- of the train tunnel or a
13 parking lot near it.

14 Q. Okay. And what happens next?

15 A. They sat there and they waited for a train to come.

16 Q. Okay. Does there come a point when the defendant tells
17 the aliens that it's time for them to go through the train
18 tunnel?

19 A. Yes. So typically the train comes at about the 1:00 a.m.
20 to 1:30 mark, but that night the train must have been late or
21 did not arrive. So at about 3:00, 3:15 in the morning, he told
22 them -- the defendant told the aliens to just go and make their
23 way through the tunnel.

24 Q. Okay. And what about arrangements once the aliens entered
25 the United States, was there any discussion of that?

1 A. Yes. The defendant told both aliens that there would be a
2 white truck waiting for them at the Green Dot Stables, if not
3 him himself.

4 Q. And based on your knowledge and investigation, what is the
5 Green Dot Stables?

6 A. It is a restaurant in the southwest Detroit area.

7 Q. Okay. Now, does there come a point in time when you're
8 interviewing these two aliens where you ask if they can
9 identify the smuggler?

10 A. Yes.

11 Q. Okay. And can you tell us about that a little bit?

12 A. Sure. So I believe at the time we -- we had just happened
13 to -- we pulled a couple pictures that we had some possible
14 smugglers within the United States -- or within the Canada
15 area, and we showed them a picture. We asked them if that
16 person looked familiar, which the picture was of the defendant.

17 MS. BRAZILE: Your Honor, again, I don't have this
18 picture. If this was a photo array lineup, we don't have any
19 comparison as to what he is referring to --

20 THE COURT: I don't even know --

21 MS. BRAZILE: -- as far as identification.

22 THE COURT: -- to whom you are referring.

23 THE WITNESS: To the defendant. About the defendant.

24 THE COURT: All right. Can we start over with this?

25 It's a little jumbled.

1 MR. McDONALD: Sure.

2 BY MR. McDONALD:

3 Q. At some point during your interview of the illegal aliens
4 that you arrested on July 30th in the morning --

5 A. Yes.

6 Q. -- did you show them any photographs?

7 A. We did.

8 MS. BRAZILE: Again, this is --

9 THE COURT: Wait. Let him continue.

10 MS. BRAZILE: Okay.

11 BY MR. McDONALD:

12 Q. And what photograph did you show the aliens?

13 A. We showed a photograph of Mr. Garcia.

14 Q. Okay. And when you showed the photograph to Mr. Garcia,
15 what, if anything, did you -- did you ask them or tell them?

16 A. We just asked them, does this person look familiar to you.

17 Q. Okay. And you did that each -- to each individual?

18 A. Yes, we did.

19 Q. Okay. And what did they say?

20 A. They positively ID'ed the defendant as 100 percent certain
21 that that was who brought them to the train tunnel.

22 Q. Okay. Now, let me ask you a little bit about this -- this
23 phone number.

24 You previously testified that you had been able to
25 obtain a phone number in March and that when you arrested these

1 two aliens you found the same phone number in -- with the
2 aliens?

3 A. Right.

4 Q. Do you know when the defendant was actually arrested?

5 A. It was on August 29th.

6 Q. Okay. And that's when he is coming into the United
7 States; is that right?

8 A. Correct.

9 Q. And in the course of that arrest did the defendant give
10 you any phone number that -- that is associated with him
11 himself?

12 A. Yes, sir.

13 Q. And was that the same or a different phone number than
14 given to you by the alien in March and given to you by the two
15 aliens in July?

16 A. It was the same phone number.

17 MR. McDONALD: May I have just one second, your
18 Honor?

19 THE COURT: You may.

20 (Pause in the proceedings at 1:41 p.m.)

21 MR. McDONALD: I don't have any further questions.

22 THE COURT: Thank you.

23 Ms. Brazile, would you like to cross examine this
24 witness?

25 MS. BRAZILE: Yes, your Honor.

CROSS EXAMINATION

1
2 BY MS. BRAZILE:

3 Q. Agent Goloweyco?

4 A. Yes, ma'am.

5 Q. From your testimony you identified Government's Exhibit 4?

6 A. Yes, ma'am.

7 Q. And Government's Exhibit 5?

8 A. Yes, ma'am.

9 Q. Do you see it from here?

10 A. Uh-huh.

11 Q. As being the two nationals that are the same ones that are
12 in Government's Exhibit 1 -- sorry -- 1, 2 -- you have it in
13 front of you --

14 A. Yes, ma'am.

15 Q. -- and 3?

16 A. Yes, ma'am.

17 Q. Is that correct?

18 A. That is correct.

19 Q. And from your testimony, you say that Government's
20 Exhibit 4, supposedly there was a conversation that the subject
21 in the photo supposedly translated for the Guatemalan nationals
22 in the photo?

23 A. Yes.

24 Q. Because they could not speak English?

25 A. Correct.

1 Q. Do you have audio of this conversation?

2 A. I do not.

3 Q. Did you have any recording at all of any conversation
4 between the nationals and the subject?

5 A. I do not.

6 Q. Are you aware, Agent Goloweyco, that Mr. Garcia-Jimenez is
7 a taxi driver --

8 A. Yes, ma'am.

9 Q. -- in Canada?

10 A. Yes, ma'am.

11 Q. So his number being in the phone of one of the nationals,
12 his number you claim appeared in one of their phones?

13 A. It appears in both their phones.

14 Q. Okay. And he is a taxi driver?

15 A. He is.

16 Q. Okay. Do you have any audio or surveillance of any of the
17 conversations that took place in his taxicab?

18 A. In his taxicab?

19 Q. In his vehicle.

20 A. No, ma'am.

21 Q. Okay. You said you do have WhatsApp conversations?

22 A. Yes, ma'am.

23 Q. And that is about transporting them?

24 A. Correct.

25 Q. And that's in Spanish?

1 A. Correct.

2 Q. This casino, is it located in Canada?

3 A. Yes, ma'am.

4 Q. Okay. The conversations that were supposedly taking place
5 but not recorded, did those take place in Canada, as far as you
6 know?

7 A. Which conversations?

8 Q. The conversations, any of them. The ones at the casino,
9 that took place in Canada?

10 A. Yes. So in the video you're able to see them talking to
11 each other.

12 Q. Okay. And the conversations that you claim occurred,
13 that the nationals claim occurred between the subject and
14 themselves, that took place in Canada prior to any entry into
15 the United States?

16 A. With the WhatsApp or speaking face-to-face?

17 Q. Any of them.

18 A. Yes.

19 Q. They took place in Canada?

20 THE COURT: Wait. Wait. Hold on. I don't know what
21 "yes" answers. What question are you answering?

22 MS. BRAZILE: Okay. I'll -- I'll ask him again and
23 we will break them down.

24 THE COURT: Thank you.

25

1 BY MS. BRAZILE:

2 Q. The conversations that the Guatemalan nationals claim to
3 have had with the subject --

4 THE COURT: The defendant.

5 Q. -- the defendant, the accused, the conversations in his
6 vehicle, did those take place in Canada?

7 A. Yes.

8 Q. Okay. The conversations that the Guatemalan nationals
9 claimed to have had with the defendant on WhatsApp, did that
10 take place in Canada?

11 A. Yes.

12 Q. In Government's Exhibit 1, 2, or 3, is there any depiction
13 of the subject defendant accused, Juan Garcia-Jimenez?

14 A. No, ma'am.

15 Q. Okay. In Government's Exhibits 1, 2, or 3, is there any
16 depiction of subject Juan Garcia's vehicle?

17 A. No, ma'am.

18 Q. Mr. Juan Garcia-Jimenez was arrested on what date again?

19 A. I believe August 29th, 2018.

20 Q. Was there any illegal nationals or foreign nationals with
21 him in his vehicle?

22 A. No, ma'am.

23 Q. Okay. Did he have proper paperwork to come to the United
24 States?

25 MR. McDONALD: I'm going to object to relevance.

1 THE COURT: Over -- overruled.

2 BY MS. BRAZILE:

3 Q. Did he?

4 A. I believe so. I believe he had his Canadian passport.

5 Q. Okay. To your knowledge, Agent Goloweyco, did subject

6 Juan Garcia-Jimenez have any contact at all with these

7 Guatemalan nationals in the United States?

8 A. That, I do not know.

9 Q. You can't say one way or the other?

10 A. No.

11 Q. You have no information regarding that; right?

12 A. No.

13 Q. Do you have any information regarding subject/defendant
14 Juan Garcia-Jimenez having any contact with any of the illegal
15 nationals that were subjects of the investigations since March
16 in the United States?

17 Do you have -- do you need me to ask that again?

18 A. So after they entered the United States?

19 Q. Do you have any information --

20 A. No. They were all in our custody at that time.

21 Q. So your investigation didn't lead to anyone that they met
22 here in the United States?

23 A. No, ma'am.

24 MS. BRAZILE: I have no further questions, your

25 Honor.

1 THE COURT: Thank you.

2 Mr. McDonald?

3 MR. McDONALD: Very briefly.

4 REDIRECT EXAMINATION

5 BY MR. McDONALD:

6 Q. You said that at one point you looked at the conversations
7 that -- on the WhatsApp messaging service between these two
8 Guatemalans and the defendant?

9 A. Yes, sir.

10 Q. And can you tell the Court whether that conversation talks
11 about the payment of money to get across the United States
12 border?

13 A. Yes, sir, it does.

14 Q. Okay. And do you remember specifically what it said?

15 A. It -- it was quite a -- over a course of several days,
16 they were talking back and forth, but it was the facilitation
17 of their transport to the cargo tunnel and how to get them
18 through. He also stated within the -- or the defendant also
19 stated in the conversation that there would be someone waiting
20 for them on the other side to pick them up.

21 Q. Okay. There was a recent incident with four more illegal
22 aliens; is that right?

23 A. Yes, sir.

24 Q. And did any of those aliens or all of those aliens
25 identify the defendant as the individual who assisted them

1 in -- with smuggling to the United States?

2 A. Yes, they did.

3 Q. They -- they --

4 A. Yes. They -- they indicated that it was the defendant.

5 MR. McDONALD: Okay. All right. Thank you. I don't
6 have any other questions.

7 THE COURT: Ms. Brazile, anything further?

8 MS. BRAZILE: No, your Honor.

9 THE COURT: Thank you.

10 You may step down. Thank you.

11 Mr. McDonald?

12 MR. McDONALD: Your Honor, I have no further
13 witnesses and I -- I rest. I'm prepared to argue when the
14 Court is ready.

15 THE COURT: Ms. Brazile, do you care to call
16 witnesses?

17 MS. BRAZILE: No, your Honor. I have no witnesses.

18 THE COURT: All right. I'm going to let Mr. McDonald
19 argue at this point and then we will turn to you.

20 MR. McDONALD: Thank you.

21 Your Honor, the defendant is charged under 8 U.S.C.
22 1324 with the encouragement and inducement and inducing the
23 illegal entry into the United States, knowing that coming to
24 or remaining or entering the United States is in violation of
25 the law.

1 To prove that crime, your Honor, the government
2 would have to prove four elements. One, that the defendant
3 encouraged or induced; two, that the individual he encouraged
4 or induced is an alien; third, that he did so -- he encouraged
5 these aliens to come, enter, or reside in the United States;
6 and the last element is that knowing or in reckless disregard
7 that the aliens coming to, entering, or residing in the United
8 States is illegal.

9 Your Honor, based on the testimony of the Border
10 Patrol agent, there is probable cause to believe that at a
11 minimum, your Honor, he induced two aliens, that is, on
12 July 30th, 2018. I suggest to the Court that there is
13 probable cause that he encouraged and induced all nine aliens,
14 at least seven of which have been presented to the Court.

15 Your Honor, the crime of inducement can occur without
16 any act occurring in the United States. That's United States
17 versus Beliard, 618 F.2d 886. That's a First Circuit Court in
18 1980. That Court also -- that Court also states that if the
19 government elects to proceed in a case in which no elements of
20 the offense occurred in the United States, then venue must be
21 based on 18 U.S.C. 3238.

22 Your Honor, 18 U.S.C. 3238 talks about offenses not
23 committed in any district, but says that the trial of those
24 offenses committed in another district is appropriate where
25 the defendant or the offender is arrested in. So the

1 defendant was arrested in the Eastern District of Michigan
2 and, therefore, venue is proper under 18 U.S.C. 3238.

3 Specifically, on July 30th, your Honor, two illegal
4 aliens from Guatemala looking to come to the United States
5 contacted the defendant. The defendant picked them up in
6 Leamington, Ontario, drove them to Windsor, assisted them in
7 exchanging their money from Canadian into United States
8 dollars, took them to the entrance of the train tunnel at the
9 Windsor -- in Windsor, Canada, and instructed them when to
10 enter the tunnel, waiting for a number of hours until they
11 entered the United States. The defendant also -- and he did
12 so for money, your Honor, \$1,500 per alien.

13 The defendant also, your Honor, instructed the aliens
14 that once they entered the United States there would be an
15 individual or individuals waiting for them at a restaurant in
16 Detroit.

17 Based on the testimony of the Border Patrol agent, we
18 have satisfied, at a minimum, your Honor, by a probable cause
19 standard, and we would ask that you make that finding, that
20 there is probable cause to believe the defendant violated the
21 statute.

22 THE COURT: Thank you.

23 Ms. Brazile.

24 MS. BRAZILE: Your Honor, based on the testimony of
25 the agent, it is highly unclear that it is this defendant that

1 smuggled or assisted to smuggle anyone into the United States.

2 First of all, with regard to the alleged
3 conversations that took place between the nationals and
4 Mr. Garcia, there is nothing that connects Mr. Garcia as the
5 person that they claim to be Tralero or Tono. That particular
6 person used a phone that Mr. Garcia-Jimenez is said to have
7 possessed, however, that doesn't mean that that was -- those
8 conversations were initiated or between Mr. Garcia-Jimenez and
9 those nationals. That phone was used, but it doesn't mean
10 that Mr. Garcia-Jimenez used that phone to do that.

11 Also, your Honor, there is no conversations that were
12 recorded. The agent did not present any surveillance on the
13 Canadian side that showed, other than the casino -- which I
14 will get to in a moment -- that showed Mr. Garcia-Jimenez
15 doing the transporting of anyone to a tunnel.

16 Mr. Garcia-Jimenez is a taxi driver. He takes people
17 to where they ask him to take them. The conversations that
18 purportedly took place in a casino, again, he is a taxi
19 driver. He took two Spanish-speaking individuals to a casino
20 in Windsor. We have no idea the conversation, the extent of
21 the conversation, or what the conversation was about in the
22 casino, other than the testimonies of two individuals who have
23 been caught violating the law.

24 They have a contact in their telephone that, yes,
25 they are familiar with, because he is a taxi driver. But

1 there is nothing that indicates that that familiarity made him
2 that smuggler that they are talking about or had talked to on
3 the telephone, or I should say, with the WhatsApp application,
4 which I believe is a texting application on the telephone.
5 It doesn't mean that that was Mr. Garcia that they were
6 identifying as Tralero or Tono.

7 Again, your Honor, it is questionable whether they
8 have established probable cause at all to say that Mr. Juan
9 Garcia-Jimenez is the individual that was smuggling them.
10 They have no photograph of his vehicle near this tunnel
11 whatsoever. They have only the people alleging that they
12 brought them to the tunnel.

13 Mr. Garcia is not seen with any of these individuals,
14 either in the tunnel or after their exit, though that's what
15 they allege, that he would have been over there.

16 Your Honor, I do not believe that the government has
17 fully laid out probable cause to charge Mr. Juan Garcia-Jimenez
18 with the smuggling of the two nationals that are at issue in
19 our questioning or any of the others.

20 Thank you, your Honor.

21 THE COURT: Thank you.

22 MR. McDONALD: Your Honor, very briefly, the problem
23 with Ms. Brazile's argument is that it's not supported at all
24 by the evidence. Rather, the testimony is that the aliens
25 themselves identified the defendant as the person who picked

1 them up in Leamington, Ontario, drove them down to Windsor,
2 went with them to the Caesar's casino to exchange their money,
3 drove them to the tunnel entrance, instructed them on when to
4 enter, and instructed them that there would be an individual
5 waiting for them. So it's very clear.

6 Moreover, your Honor, there was four aliens. As the
7 individual -- the Border Patrol agent just testified, there's
8 an additional four aliens recently who testified that the
9 defendant -- or who told Border Patrol that the defendant
10 was the individual who smuggled them.

11 I think we have demonstrated beyond probable cause,
12 your Honor, that this alien has committed this crime.

13 THE COURT: Anything further, Ms. Brazile?

14 MS. BRAZILE: Your Honor, I want to make one --
15 I want to put on the record my objection also to the
16 government's establishing of jurisdiction under 18 3238.
17 They listed a case out of the First Circuit that said the
18 jurisdiction could be established.

19 There is no case, I do not believe, in this Circuit,
20 that says anything that ties this particular statute provision
21 to the Illegal Immigration Naturalization Act, 8 U.S.C. 1324.
22 There is no jurisdiction provision that's actually in 1324.
23 And the acts, all of which have been committed in this case,
24 as the agent testified, took place in Canada.

25 And, again, there was nothing that, other than as the

1 government states, the testimony of these individuals who were
2 caught illegally, that they identified a person who was a
3 contact in their phone. Again, that all took place in Canada.

4 I am questioning whether or not there is actual
5 jurisdiction or established jurisdiction, and anything that
6 says so in this Circuit that has established that there is
7 jurisdiction to bring this here.

8 THE COURT: Counsel, approach.

9 (Discussion held off the record.)

10 THE COURT: The Court will overrule Ms. Brazile's
11 objection to establishing proper venue in view of the
12 conversation we had at the bench with regard -- may I say this
13 on the record -- with regard to your intention should an
14 indictment --

15 MS. BRAZILE: Should there be an indictment, your
16 Honor, I will raise that issue again.

17 THE COURT: Thank you.

18 With regard to the issue of probable cause, this
19 Court has taken copious notes of the arguments presented by
20 both sides. The Court has reviewed Exhibits 1 through 5, as
21 well as the charging document. The Court is prepared to rule.

22 Based on the evidence presented, based on the
23 arguments made, and based on the charging documents and the
24 exhibits that have been offered to the Court in support of
25 the government's argument, the Court does find that there

1 is probable cause that the crime charged in this case under
2 8 U.S.C. Section 1324(a)(1)(A)(4) has been committed and that
3 it is the defendant in this case, Juan Antonio Garcia-Jimenez,
4 who has committed this crime.

5 The elements of the crime have been satisfied, in the
6 Court's view, and that the crime was committed and that the
7 crime was committed by this defendant. The Court finds
8 probable cause on both counts.

9 MR. McDONALD: Thank you, your Honor.

10 MS. BRAZILE: I don't think there is anything further
11 from the defendant, your Honor. From what I understand, any
12 future charges will be forthcoming.

13 THE COURT: Very well.

14 MR. McDONALD: Nothing further from the government.
15 Thank you.

16 (Proceedings concluded at 2:03 p.m.)

17 * * *

18
19 CERTIFICATE OF TRANSCRIBER

20
21 I certify that the foregoing is a correct transcription
22 from the official electronic sound recording of the proceedings
23 in the above-entitled matter.

24
25 s/ Rene L. Twedt
RENE L. TWEDT, CSR-2907, RDR, CRR, CRC
Federal Official Court Reporter

October 29, 2018
Date